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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,721	05/25/2007	Roy B. Nelson	3712036.00741	9915
29157	7590	10/14/2010	EXAMINER	
K&L Gates LLP			JACYNA, J CASIMER	
P.O. Box 1135				
CHICAGO, IL 60690				
			ART UNIT	PAPER NUMBER
			3754	
			NOTIFICATION DATE	DELIVERY MODE
			10/14/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/596,721	<b>Applicant(s)</b> NELSON ET AL.	
	<b>Examiner</b> J. Casimer Jacyna	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

1. Claim 18 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/17/2009.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claim 10 is objected to because of the following informalities: On line 11, "pumpingthe" should be two words. Appropriate correction is required.
4. Claims 1-15, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogt 2,013,016 in view of Porter et al. 5,207,352. Vogt discloses a depositing device including a pressurized feed line 146 containing a food such as ice cream with a gas injected at 68 as disclosed on page 3, left column, line 71, to the right column, line 3, with the food product delivered to molds 179 substantially as claimed but does not disclose a piston and chamber outlet with a pressure retaining means. However, the embodiment of figures 3 and 4 of Porter teach another depositing device including a pressurized feed line 52 for viscous material which is also injected with gas at 304 having a piston 72, a chamber 100, 62, and surrounding 42, an outlet 98 capable of delivering the product to molds as claimed wherein the product will be at atmospheric pressure as claimed when deposited from 101, and pressure retaining means 108 wherein control 92 operates 108 to open when there is a surge in line pressure caused by 92 coordinating the descent of piston 72 which fully opens valve 66 for the purpose of ensuring that the gas is maintained in solution until discharged to atmosphere (see column 3, lines 6-15 of Porter). Therefore, it would have been obvious to one of

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ordinary skill in the art at the time the invention was made to provide the dispenser of Vogt with a piston and chamber outlet having pressure retaining means as, for example, taught by Porter, in order to ensure that the gas is maintained in solution until discharged to atmosphere. In regard to claims 2 and 3, valve 108 of Porter is pressure actuated by the pressurized air entering at 118 which controls piston 121 to open and closed the valve which is spring loaded to a normally closed position by 130. In regard to claims 4 and 5, one of ordinary skill in the art would have considered it obvious to adjust the pressure level from 209 or the tensions or bias of the spring with 150 to open at any particular pressure a user or designer found desirable. In regard to claims 6 and 7, Vogt discloses rotary valve 178. In regard to claim 8, Vogt discloses splitting the outlet stream into two flows 177. In regard to claim 9, Porter teaches a servo control 92. In regard to claim 10, Vogt discloses a product pump means A and a gas pump means B. In regard to claims 14 and 15, one of ordinary skill in the art would have considered it obvious to adjust the speed ratio of the pumps to any particular ratio a user or designer found desirable.

5. Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogt 2,013,016 in view of Porter et al. 5,207,352 as applied to claim 10 above and further in view of Aymard et al. WO 0213618. Vogt discloses a depositing device including the use of two pumps A and B for product and gas and a pressure retaining valve 172, 174 substantially as claimed but does not disclose a specific control of the pump ratios nor the removal of excess product. However, Aymard discloses another depositing device including a product pump (see the embodiment of figure 3) HPP1 and

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a gas pump HPP2 with ratios to suction in a desired amount of gas from 10 and an excess product return line 50 at the pressure retaining valve VAN DEP for the purpose of attaining better control of the gas injection and product line pressure. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the dispenser of Vogt with a set of specific pump speed ratios and an excess product return line as, for example, taught by Aymard in order to attain better control of the gas injection and product line pressure.

6. Applicant's arguments filed 9/2/2010 have been fully considered but they are not persuasive. Applicant contends that Porter does not function as claimed. However, the embodiment of figures 3 and 4 teaches synchronizing the movement of piston 72 with the opening and closing of valve 108 wherein 92 is capable of controlling piston 72 to lower and increase pressure within the chamber 100, 62 while also raising 121 and 108 as claimed. When valve 66 is initially opened, the pressure in the chamber will be the same as line pressure in 54 until the operation of 92 adjusts with chamber pressure with 72 which is coordinated with the opening and closing of 108 as claimed.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/  
Primary Examiner, Art Unit 3754